

REMARKS

The reply filed on January 20, 2004 is objected to as not being fully responsive to the prior Office Action. In responding to the prior Office Action, Applicant overlooked this aspect of the Office Action. Any inconvenience is regretted. The Examiner has objected to the drawings under 37 CFR 1.84(p)(5) stating that FIGURE 1 includes reference numeral 26, and that reference numeral 26 is not mentioned in the description.

Applicant wishes to respectfully point out that reference to numeral 26 in FIGURE 1 is made in the Specification on page 6, paragraph 36, last line and on page 7, paragraph 38, last line.

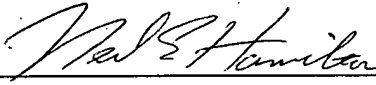
In view of the foregoing remarks, the application is deemed to be in condition for allowance. If it is not in condition for allowance, the examiner is respectfully requested to call applicants' attorney.

The Commissioner is hereby authorized to charge any fee due for this communication, or to credit any overpayments made, to Deposit Account No. 50-0231.

Respectfully Submitted,

Dated: 12 February 2004

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REMARKS/ARGUMENTS

Responsive to the communication mailed on September 23, 2003, Applicants provide the following remarks in an effort to address the issues presented by the Examiner. Applicants submit that this response adds no new matter to the application. Reconsideration and reexamination are, therefore, respectfully requested.

Restriction Requirement and Election of Species under 35 USC § 121

A restriction requirement under 35 U.S.C. § 121 has been imposed on claims 1-40. Specifically, the Examiner has recognized two patentably distinct species: Species I of Figures 2 and Species II of Figure 3. Applicants identify claims 1-16, 18, 20, 24-31, 33, 35 and 39-40 as reading on Species I and claims 17, 19, 21-23, 32, 34, 36-38 as reading on Species II.

Required Election

To comply with the restriction requirement, Applicants hereby elect, with specific traverse, the claims drawn to Species I of Figure 2 (claims 1-16, 18, 20, 24-31, 33, 35 and 39-40), for prosecution on the merits.

Election Traversal

For the reasons set forth in detail below, Applicants traverse the requirement for election of species and respectfully request reconsideration and withdrawal of the requirement. Further, Applicants reserve the right to file a continuing application or take

such other appropriate action as deemed necessary to protect the non-elected species.

Applicants do not hereby abandon or waive any rights in the non-elected species.

Criteria for Restriction

The necessary criteria for a proper restriction requirement have been clearly defined. Each restriction must meet two separate requirements. These requirements reflect both the statutory basis for restriction under 35 U.S.C. § 121 and its discretionary nature. The criteria are described in the Manual of Patent Examining Procedure (MPEP) at section 803, in relevant part, as follows:

There are two criteria for a proper requirement for restriction
between patentably distinct inventions:

- (1) The inventions must be independent...or
distinct as claimed; and
- (2) There must be a serious burden on the
examiner if restriction is required...

Basis for Present Restriction Requirement

The Examiner states, at page 2, paragraph 1 of the Action that this application contains claims directed to the following patentably distinct species of the claimed invention: Species I of Figure 2 and Species II of Figure 3. The Examiner further states at page 2, paragraph 1 of the Action that Applicants are required under 35 U.S.C. § 121 to elect a single disclosed species for prosecution on the merits.

Restriction Is Not Required For The Instant Application

Applicants respectfully disagree that election is required in this application between Species I of Figure 2 and Species II of Figure 3, because no serious burden would be placed on the Examiner by examining both species. Figure 3 shows inventive alternatives for different parts of the embodiment (variable hydraulic valve drive) shown in Figure 2; however, there is a distinct relationship between the Figure 2 embodiment and Figure 3 alternatives in that whenever a Figure 3 alternative is employed, consideration must be given to nodes A, B, C, D and E of the embodiment shown in Figure 2, so that only identically identified nodes may be connected together (see spec. page 7, lines 3-7). Given this relationship, it is unlikely that a search directed to the claims reading on the elected species would necessitate a search in an area where no art pertinent to the other species exists. Furthermore, the Examiner has not shown that Species I and Species II have separate status in the art, particularly when the various configurations of Species II are implemented into the hydraulic circuit of Species I, or require a different field of search. Therefore, concurrent examination does not place a serious burden on the Examiner.

Further, it is Applicants understanding that the purpose of an election of species is for searching, and that the Examiner would first search in the area of art pertaining to the elected species. If no art that would potentially defeat the patentability of the elected species is found, the Examiner would then continue to search in any area of art pertinent to the non-elected species.

Conclusion

For the above stated reasons, no serious burden is placed on the Examiner by the concurrent examination of the claims that read on both related Species, namely Species I of Figure 2 and Species II of Figure 3, and, therefore, election should not be required between those two species in this application.

Applicants request, therefore, that Species I of Figure 2 and Species II of Figure 3, respectively, be rejoined in a single group and concurrently examined in this application.

Amendment

Drawings

Fig. 1 has been amended. Specifically, the designation "prior art" has been added, while reference signs 15, 27, 46, 80, 82 and 84, which are not mentioned in the specification, have been removed. No new matter has been introduced by this amendment.

Specification

The abstract of the disclosure has been amended to eliminate legal phraseology; specifically, the term "comprising" has been removed. Additionally, various paragraphs at the beginning of the specification have been amended to correct obvious typographical errors occurring in some of the reference numbers cited therein. No new matter has been introduced by this amendment.

Claim Objections

Claims 9, 13, 14, 16, 28, 29 and 31 were objected to because the wrong form of the terms "obtains" and "obtaining" is used therein. Accordingly, Applicants have removed the terms "obtains" and "obtaining" and have rewritten these claims to clarify their meaning. No new matter has been introduced by this amendment.

Conclusion

Applicants submit that this paper is fully responsive in addressing the issues set forth by the Examiner in current Office Action. If, for any reason, the Examiner determines that this paper is not fully responsive, Applicants request that counsel be contacted so any remaining issues can be resolved in an expeditious manner. Reconsideration is requested and favorable action is earnestly solicited.

It is believed that a petition for a two-month extension of time and fee are currently due and submitted herewith. If, however, the fee is insufficient or a petition for an additional extension of time is required, please consider this a petition for an extension of time therefore, and authorization for the Commissioner to charge any additional required fees to Deposit Account No. 12-2147.

Respectfully submitted,
Lorusso Loud & Kelly LLP



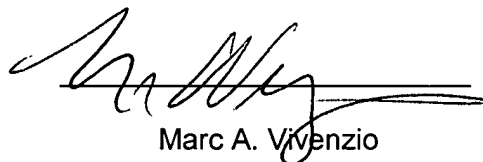
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CERTIFICATE OF MAILING UNDER 37 CFR 1.8

I hereby certify that this Amendment and Response and any paper or document referred to therein as being attached or enclosed, is being deposited with the U.S. Postal Service as First Class Mail under 37 C.F.R. 1.8 in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 23, 2003.



Marc A. Vivenzio